

REBUTTAL TESTIMONY

OF

THOMAS Q. SMITH

**WATER DEPARTMENT
FINANCIAL ANALYSIS DIVISION
ILLINOIS COMMERCE COMMISSION**

RME ILLINOIS, L.L.C.

**PETITIONS FOR ISSUANCE OF CERTIFICATES OF PUBLIC CONVENIENCE AND
NECESSITY TO PROVIDE ONSITE WASTEWATER, COLLECTION AND
DISPERSAL SERVICES TO PARCELS IN LAKE COUNTY, ILLINOIS, PURSUANT
TO SECTION 8-406 OF THE ILLINOIS PUBLIC UTILITIES ACT**

DOCKET NOS. 08-0490/08-0491 (CONSOLIDATED)

March 6, 2009

1 WITNESS IDENTIFICATION

2 Q. Please state your name and business address.

3 A. My name is Thomas Q. Smith. My business address is 527 East Capitol
4 Avenue, Springfield, Illinois 62701.

5
6 Q. Are you the same Thomas Q. Smith who previously submitted Direct Testimony,
7 ICC Staff Exhibit 1.0, in this Docket?

8 A. Yes, I am.

9

10 PURPOSE OF TESTIMONY

11 Q. What is the purpose of your Rebuttal Testimony?

12 A. The purpose of this testimony is to comment on the "Verified Rebuttal Testimony
13 of Arthur R. Olson to Illinois Commerce Commission Staff Direct Testimony to
14 Certificate of Convenience and Necessity" ("Olson Rebuttal Testimony") and to
15 otherwise comment on the rebuttal position of RME Illinois, L.L.C. ("RME" or the
16 "Company").

17

18 Q. Have you reviewed the Olson Rebuttal Testimony?

19 A. Yes, I have.

20

21 Q. Please summarize your understanding of RME's position as set forth in the
22 Olson Rebuttal Testimony.

23 A. Based on my review of the Olson Rebuttal Testimony, it is my observation that
24 while Mr. Olson might disagree with my conclusions and opinion, there is little
25 dispute as to facts addressed in my Direct Testimony.

26
27 Q. In Olson Rebuttal Testimony, the Company disagrees with your recommended
28 investment level and the application of the method you engaged to determine the
29 proper investment. What is your comment?

30 A. I disagree with the amount of investment proposed by the Company in the
31 Falcon Crest Subdivision and Eastgate Estates wastewater systems. The
32 Company has proposed to invest \$41,096 in the Falcon Crest Subdivision
33 wastewater system and \$8,667 in the Eastgate Estates wastewater system as
34 shown in RME Exhibit 1.06 FC, Schedule 1.06-2, Revised 9/5/08 and RME
35 Exhibit 1.06 EG, Schedule 1.06-2, Revised 9/5/08. The Company is proposing
36 that the investment be accrued through refund of the developer's contributions of
37 plant investment as customers attach to the wastewater systems over several
38 years. The Company has proposed that it invest an amount equal to 5.0% of the
39 total cost to construct the Falcon Crest Subdivision wastewater system: \$41,096
40 investment divided by \$829,000 total cost. The Company has proposed that it
41 invest an amount equal to 3.4% of the total cost to construct the Eastgate
42 Estates wastewater system: \$8,667 investment divided by \$257,000 total cost.
43 The investment that RME is proposing is trifling compared with the total cost of
44 the wastewater systems. The Company has not proposed an adequate level of

investment in the wastewater systems as discussed in my Direct Testimony, ICC Staff Ex. 1.0, pp. 12-13, lines 266-299.

Q. Mr. Olson, on page 3 of Olson Rebuttal Testimony, indicates that it is reasonable to use generic sewer rules, as developed from 83 Ill. Adm. Code 600.370, as a guideline for the regulation of sewer operations in this Docket. Do you agree?

A. Yes. On page 14 of my Direct Testimony, ICC Staff Exhibit 1.0, I opine that "...because no Commission rules apply to sewer utilities, I am relying upon 83 Ill. Adm. Code 600.370 (Service to New Customers) of the Commission's regulations as investment policy." While Mr. Olson might disagree with specific applications, there is no disagreement that it is appropriate to use 83 Ill. Adm. Code 600.370, which is a water rule, for guidance with sewer issues in this proceeding.

Q. Olson Rebuttal Testimony, page 3, quotes as follows: "[i]n its order in Docket No. 00-0194, Citizens Utility Company of Illinois, the Commission stated that it has ...no difficulty interpreting Section 600.370(a) as also pertaining to supply plant...." Do you agree that the order in Docket No. 00-0194 contained the cited quotation?

A. I agree that the cited quotation is contained in the Order in Docket 00-0194 and further note that the cited quotation is contained in the following paragraph:

As noted above, Petitioner, by not providing refunds for costs advanced for sewer plant, will in this instance gain \$1,439,350 in sewer plant value without any corresponding investment. The Commission has no difficulty interpreting Section 600.370(a) as also pertaining to sewer supply plant to protect against the same unjust enrichment and to protect the same consumer interests as would result if refunds were not provided for water supply plant. To interpret Section 600.370(a) otherwise would permit Petitioner or any utility to amass sewer facilities entirely risk free, obviously frustrating at least part of the purpose for which this Section was enacted.

The Order is clear that the purpose of a refund of developer contributions is to insure that a utility has adequate investment. In this case I have proposed, consistently with the Order in Docket No. 00-0194, and to make certain that the Company has an adequate amount of investment in the wastewater systems, that the entire investment in backbone plant is borne by the Company. If the Company adheres to this recommendation, no contribution of backbone plant will exist, the Company will have adequate investment, and there will be nothing to refund to the developers.

Q. Olson Rebuttal Testimony, page 8, states, “[t]he Commission found specifically that Citizens should refund to Terra Cotta (in Docket No. 00-0194) the cost advanced for the TC Sewer Backbone Plant.” Are you proposing that RME refund backbone plant to the developer?

95 A. In essence I am proposing refunds. The purpose of making refunds to
96 developers is to ensure that the utility has an adequate investment in the
97 backbone plant. In this case, I am proposing that RME invest the full cost of the
98 backbone plant when the wastewater systems are acquired from the developers.
99 Substantially, the full cost of the backbone plant, and no cost of the sewer mains
100 and services, would be refunded to the developers at the time the systems are
101 acquired by RME. My proposal insures that RME will have an adequate amount
102 of investment in the systems it owns and that the developer will assume the risk
103 of the investment in the sewer mains and services.

104
105 Q. Olson Rebuttal Testimony, page 8, references the Order in Docket No. 84-0344
106 and quotes, “[t]he Commission is of the opinion that the financing methodology
107 set out in Part 600 should apply to both the proposed water and sewer
108 extensions and the backbone plant.” Do you have a comment?

109 A. Yes. I am not certain why this Order is being referenced, but I agree with the
110 Company that Part 600 is appropriately used as a guide for determining the
111 proper level of the Company’s investment in the wastewater systems at issue in
112 this Docket.

113
114 Q. On page 9 of Olson Rebuttal Testimony, the Company states “[i]n Docket No.
115 01-0645 Staff argued that Part 600 requires the utility to provide refunds to
116 developers for installation of sewer facilities.” Do you have any comments on
117 this?

118 A. Yes, I do. In this Docket the issue is backbone plant, where as the issue
119 referenced in Docket No. 01-0645 and the cited stipulation is sewer main
120 extensions.

121
122 Q. Olson Rebuttal Testimony, page 9, references the Order in Docket No. 05-0452
123 and quotes, "under the sewer rules that Petitioner appears to be operating under
124 at the present time, no contribution to capital would be required. The
125 Commission notes that upon adoption of the updated sewer rules, this issue
126 should not be in question in any dockets in the future." What is your opinion
127 regarding this citation?

128 A. I am not particularly impressed with this citation because previous Orders of the
129 Commission do not carry precedential value and it is clear that "any dockets in
130 the future" is a reference to only Galena Territory Utilities, Inc., the Party to
131 Docket No. 05-0452. Furthermore, because the Order in Docket No. 05-0452
132 applied to a well established and regulated utility, and because RME is a new
133 sewer utility with little capital investment, it is not particularly meaningful to draw
134 comparisons between these two entities.

135
136 Additionally, the Order in Docket No. 05-0452 is clear that the reason that the
137 utility in question, Galena Territory Utilities, Inc., should not be required to invest
138 in the improvements is that the new customer that contributed the improvements
139 was required to make improvements by the Environmental Protection Agency;
140 the customer, not a third party developer, agreed to contribute the system to the

141 utility without reimbursement; the utility already had adequate investment in its
142 sewer system; and the rules that the utility had in place at the time did not
143 require it to invest in the improvements. The Order notes that if sewer rules,
144 similar to rules that RME is requesting in this case, had been in effect, then it
145 would have been appropriate for the utility to invest in the improvements.

146
147 In consolidated Docket Nos. 08-0490/08-0491, developers, at their option are
148 constructing each wastewater system. No entity is compelling either the Falcon
149 Crest or Eastgate Estates subdivisions be developed, the agreements that
150 contribute the wastewater systems to RME are with developers and not with
151 customers, RME has little investment in the wastewater systems, and RME is
152 requesting approval of rules that provide for it to invest in plant. In reality, the
153 Order in Docket No. 05-0452 is consistent with my position relative to the proper
154 investment to be made by RME.

155
156 It should also be noted that the Order in Docket No. 05-0452 scolded and fined
157 the utility for attempting to circumvent the Commission's oversight.

158
159 Q. On page 9 of Olson Rebuttal Testimony, the Company states "[t]he sewer rules
160 approved by Staff in the dockets in question discuss sewer refunds on pages 19
161 and 20 see Attachment FC-3 to the Original Petition in Docket No. 08-0490 and
162 Attachment EG-3 to the Original Petition in Docket No. 08-0491." Would you like
163 to make a comment regarding these sewer rules?

164 A. Yes, I would. This rule applies to refunds to developers for future sewer main
165 extensions, not to backbone plant. In this case, I have proposed that the sewer
166 mains be contributed entirely by the developers and not be subject to refunds. I
167 have proposed an investment by the Company in only the backbone plant of the
168 wastewater systems. Given the facts of these consolidated dockets, my
169 proposal provides for a reasonable and adequate amount of investment in the
170 wastewater systems by the Company.

171
172 Q. Olson Rebuttal Testimony, page 11, states that Mr. Smith did not have any
173 comments on the Wastewater Service Agreements attached to the original
174 petition as Exhibit FC-C and Exhibit EG-C. Would you like to make a comment
175 now?

176 A. Yes, I would. Because I am rejecting the Company's proposed sewer refund
177 methodology, I have also rejected the Wastewater Service Agreements.

178
179 Q. Olson Rebuttal Testimony, page 11, states

180 Mr. Smith in his testimony attempts to impute to RME some
181 imagined conspiratorial plan wherein RME, in concert with the
182 developer, sought to by pass the ICC requirements for installation
183 of a sewer system when in fact Mr. Smith's own inspection of the
184 site on September 29, 2008 did not reveal that RME was in any
185 way involved in the installation of the sewer system at the subject
186 property.

187

188

189 Do you have any comment regarding Mr. Olson's statement?

190 A. Yes, I do. I am not certain how Mr. Olson would know the results of my
191 inspection or what I might have concluded from that inspection. However,
192 Section 8-406(b)(2) of the Public Utilities Act requires "...that the utility is capable
193 of efficiently managing and supervising the construction process and has taken
194 sufficient action to ensure adequate and efficient construction and supervision
195 thereof...". Mr. Olson's suggestion in the above citation that RME was not
196 involved in the construction of the sewer system is evidence that it is not capable
197 of efficiently managing and supervising construction. Mr. Olson's testimony is
198 further evidence in support of my position that Certificates of Public Convenience
199 and Necessity be denied to RME.

200

201 Q. Olson Rebuttal Testimony, page 12, indicates that your "interpretation" is
202 "personal opinion". Have you attempted to burden the record in this Docket with
203 your personal opinion?

204 A. No, I have not. Everything that I have provided for the record is either fact as I
205 believe it to be or my expert professional opinion and testimony based on 34
206 years of working experience with utility regulatory agencies and regulated utility
207 companies. My personal thoughts have been excluded from my testimony.

208

209 Q. Is there any dispute between you and RME regarding its proposed Rules,
210 Regulations, and Conditions of Service tariffs for sewer service?

211 A. It is my belief that both the Company and Staff support approval of the proposed
212 Rules, Regulations, and Conditions of Service tariffs for sewer service.

213 Q. Has your position changed from what you offered in your Direct Testimony, ICC
214 Staff Exhibit 1.0?

215 A. No, it has not. Based on my Direct Testimony as more fully explained in this
216 Rebuttal Testimony, in my opinion, the Company has not met the requirements
217 set forth in Section 8-406(b)(2) of the Act. I recommend that the requested
218 Certificates of Public Convenience and Necessity be denied.

219

220 If the Commission grants the Certificates of Public Convenience and Necessity,
221 however, I recommend the following:

222

223 1) the Commission approve the Company's proposed certificated service areas,
224 which are shown on the maps identified as RME Exhibits FC-A and EG-A of the
225 Petition and legally described in RME Exhibits FC-B and EG-B of the Petition;

226

227 2) the Commission approve the Company's proposed Rules, Regulations, and
228 Conditions of Service tariffs for sewer service;

229

230 3) the Commission Order the Company to file the Rules, Regulations, and
231 Conditions of Service tariffs for sewer service, within ten (10) days of the final
232 Order, with an effective date of not less than five (5) working days after the date
233 of filing, for service rendered on and after their effective date, with individual tariff
234 sheets to be corrected within that time period, if necessary; and

235

236 4) the Company be required to invest \$465,388 in the wastewater system for the
237 Falcon Crest Subdivision and \$172,508 in the wastewater system for Eastgate
238 Estates.

239

240 Q. Does this conclude your prepared Rebuttal Testimony?

241 A. Yes, it does.